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ABSTRACT

THE FOLLOWING IS THE FULL TEXT OF THIS DOCUMENT: A federal judge in New York has ruled that, under federal copyright law, a group of Buffalo area school districts cannot videotape the televised works of three filmmakers - even for temporary educational purposes. U.S. District Judge John Curtin's decision deals another blow to the Erie County Board of Cooperative Educational Services (BOCES), which the judge last year said had violated the fair use provisions of the Copyright Act of 1976 by its massive videotaping of copyrighted works. At that time, the judge indicated that some limited or temporary use of the works might be legal. But after considering the potential harm to the markets of Encyclopaedia Britannica, Learning Corporation of America, and Time-Life Films, the judge again sided with the filmmakers. The Erie County BOCES suggested a temporary-use period (during which no royalties would be paid and works could be used and then erased) of one year or 45 days - the latter period recommended by the copyright guidelines of a U.S. House of Representatives subcommittee. But Curtin ruled in "Encyclopaedia Britannica v. Crooks" that no temporary use of the works is permitted under federal copyright law. Among the criteria for judging fair use of copyrighted works is the effect of the use on the owner's potential market, Curtin said. The judge found it significant that all of the 19 works at issue in the case "are available for rental or lease for short- or long-term periods in both film and videotape form" and can be rented for as short a time as one to three days. In addition, the firms offer many types of licensing agreements for schools, Curtin noted. "For these reasons, any temporary use by BOCES of plaintiffs' copyrighted works would interfere with the marketability of these works, and the cumulative effect of this temporary videotaping would tend to diminish or prejudice the potential short-term lease or rental market for these works," Curtin ruled. Although distribution of copyrighted works may be in the public interest when the information is hard to get, he said, "in this case it is evident that copies of the plaintiffs' work may be obtained for short periods through normal channels." The standard for proving violations of the doctrine of fair use is "potential" harm to the copyright owner's market, "but we showed actual harm," said R. William Stephens, attorney for the filmmakers. He labeled the case significant because the defendants who were found liable for damages included BOCES board members and the staff members who copied the firms' works. Curtin assessed damages of $63,500 and an additional $15,000 in court costs against the BOCES defendants, Stephens said. (Author)

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